MARVIN MACK
BETTY K. MACK

IBLA 80-860 Decided October 30, 1980

Appeal from decision of the California State Office, Bureau of Land Management, declaring the Tara mining claims Nos. 1 through 16 null and void ab initio. CA MC 69563-69578.

Affirmed.

1. Mining Claims: Determination of Validity -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

   Mining claims located on land at a time the land is withdrawn from appropriation under the United States mining laws properly are declared null and void ab initio.

APPEARANCES: Marvin Mack and Betty K. Mack, pro sese.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Marvin and Betty K. Mack have appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated June 30, 1980, declaring the Tara placer mining claims (CA MC 69563-69578), located on May 1, 1980, null and void ab initio because the lands were not open to mineral entry.

The claim notices filed with BLM July 13, 1980, indicated that the claims were located in the W 1/2 NW 1/4 and the SW 1/4 sec. 34, T. 22 N., R. 9 E., Mount Diablo meridian, California. The official land status records of BLM show that the lands in the W 1/2 NW 1/4 and the SW 1/4 lots 4 and 5, sec. 34, T. 22 N., R. 9 E., were withdrawn May 6, 1963, for use as part of a United States Forest Service Recreational Area by Public Land Order (PLO) No. 3065, 28 FR 4707 (May 10, 1963), and are "withdrawn from prospecting, location, entry and purchase under the mining laws of the United States."

[1] Because of the withdrawal in 1963 the land was not available for the filing of mining claims thereafter. Where a mining claim is located on land previously withdrawn from appropriation under the

mining laws, an attempt to locate a mining claim on such land is a nullity and the claim is properly declared null and void ab initio. Leo J. Hottas, 73 I.D. 123 (1966), aff'd. sub nom. Lutzenheiser v. Udall, 432 F.2d 328 (9th Cir. 1970); Jack C. Franks, 49 IBLA 162 (1980), Jacqueline E. Nelson, 47 IBLA 12 (1980); Tilden Holloway, 43 IBLA 134 (1979).

In their statement of reasons on appeal, appellants assert that the claims in question were filed under the Act of August 11, 1955, P.L. 359, 69 Stat. 797. The second section of the Act clearly indicates the types of withdrawn or reserved lands to which it applies, it states in part:

> All public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites shall be open to entry for location and patent of mining claims and for mining, development, beneficiation, removal, and utilization of the mineral resources of such lands under applicable Federal statues.

69 Stat 797, 30 U.S.C. § 621 (1976).

P.L. 359 was not applicable to appellants' mining claims in that the subject lands were not withdrawn for the purposes of power development or power sites, but for a U.S. Forest Service recreational area. Appellants' plan to commence a mining operation on some 2,400 acres of patented adjoining land which they assert contains "a proven mine" does not afford any legal basis to disregard the mineral closure impact of the withdrawal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Anne Poindexter Lewis
Administrative Judge